

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2135

Heard at Montreal, Wednesday, 10 April 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The abolition of a position of Mechanical Analyst (unionized) and the creation of a position of Work Order Copy Clerk at the Halifax Maintenance Centre in July 1988.

JOINT STATEMENT OF ISSUE:

On June 28, 1988, the Corporation advertised for a position of Mechanical Analyst (non-unionized) at the Halifax Maintenance Centre. On July 11, 1988, the Corporation abolished the position of George Roberts, Mechanical Analyst (unionized), and concurrently created a position of Work Order Copy Clerk (unionized).

The Brotherhood contends that in so doing, the Corporation violated Articles 13.2 and 21.7 of Collective Agreement No. 1. The Brotherhood claims that the unionized position of Mechanical Analyst and the Mechanical Analyst (non-unionized) are the same work. The Brotherhood also alleges that the Corporation was trying to change the Mechanical Analyst position (unionized) to a Work Order Copy Clerk at a lower rate of pay and a change in classification. The Brotherhood has requested that the Mechanical Analyst (unionized) position be retained and the non-unionized position be cancelled.

The Corporation denies violating Article 21.7 of the Collective Agreement. The Corporation, however, concedes that a 10-day advance notice was not given pursuant to Article 13.2 to the regularly assigned employee whose job was abolished, but that the intent of Article 13.2 was not violated since there was no adverse impact as a result of the abolition.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR
RELATIONS

There appeared on behalf of the Corporation:

D. Fisher	Senior Officer, Labour Relations, Montreal
M. St-Jules	Senior Negotiator & Advisor, Labour Relations, Montreal

C. Pollock Senior Officer, Labour Relations, Montreal
P. Hughes Observer

And on behalf of the Brotherhood:

T. Barron Representative, Moncton
R. Dennis Representative, Moncton

AWARD OF THE ARBITRATOR

Upon a review of the material the Arbitrator is satisfied that the position of Analyst, Mechanical Services, established by the Corporation does not involve the work that was traditionally performed within the bargaining unit under the position of Mechanical Analyst. The management position established involves the critical analysis of data and output reports and the identifying of any significant trends in the maintenance history of the Corporation's rolling stock. This differs substantially from the job Mechanical Analyst within the bargaining unit, which involved the production of reports and information rather than their analysis. Moreover, the evidence before me does not establish that the establishment of the position of Work Order Copy Clerk is tantamount to changing the classification and pay for the same work previously performed in the Mechanical Analyst position. In the result, the Arbitrator must accept the position of the Corporation that no violation of the Collective Agreement in that regard is disclosed.

It does not appear that the Corporation's admitted failure to provide the ten-day advance notice required by Article 13.2 resulted in any substantial prejudice or adverse impact in the circumstances of this case.

For the foregoing reasons the grievance must be dismissed.

April 12, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR